**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

**Case No. : C.R.No.2728 of 1995**
**Date of Decision : May 21, 2007**

M/s Chaudhary Construction Company .... Petitioner

Vs.

Union of India ad others .... Respondents

CORAM : HON'BLE MR.JUSTICE L.N.MITTAL.

* * *

Present : Mr.Suvir Sehgal, Advocate
for the petitioner.

Mr.S.K.Sharma, Central Government Counsel
for respondents no.1 to 4.

* * *

L.N.MITTAL, J. :

The petitioner carried out some construction work of respondents no.1 to 4. Disputes arose between them regarding the same. As per Arbitration clause in the agreement, the disputes were preferred to Arbitrator-respondent no.5 herein. The Arbitrator gave his Award dated 28.05.1992, thereby awarding Rs.2,12,457.30 paise, to the contractor-petitioner herein, against his claim No.9, payable by respondents no.1 to 4 and awarding no amount against other claims to the petitioner.

The petitioner filed petition for filing of the Award and for making the Award a rule of the Court. (The petition was presumably under Section 14 and 17 of the Arbitration Act, 1940 – in short, the Act.)

The respondents no.1 to 4 filed objection petition under Section 30 of the Act pleading inter alia that under Condition no.11 of the

Agreement, no claim in respect of compensation or otherwise for prolongation period (extended period of work), shall be admitted. The Arbitrator, in violation of the said condition, awarded damages to the petitioner, on account of prolongation of the contract period and therefore, the Arbitrator misconducted himself. Extension of time was granted to the Contractor on his own request, with clear stipulation that there was no financial effect of the extension. The contractor accepted the same without any reservation. In spite thereof, the Arbitrator has awarded the aforesaid amount to the Contractor-petitioner. Award of interest by the Arbitrator on the awarded amount for pre-reference and post award period was also objected to. The Award was also assailed on the ground of being unreasoned or non-speaking.

The Contractor filed reply to the Objection Petition of the respondents, broadly controverting the pleas raised therein.

Pleadings of the parties gave rise to the following issues :-

*"1. Whether the award dt.28.5.1992 is liable to be set aside on the grounds taken in the objection petition? OP*

*Objector*

*2. Whether this Court has no jurisdiction to try and decide the present case? OP*

*Objector*

*3. Relief."*

The learned trial court (Sub Judge Ist Class, Chandigarh), vide judgment dated 30.09.1993, held under issue no.1 that the Arbitrator travelled beyond his jurisdiction and acted against express provisions of the Agreement and thus misconducted himself by awarding the disputed amount against claim no.9 and the Arbitrator has also not given any findings (reasoned findings). Accordingly, issue no.1 was decided in favour of the objectors-respondents herein. Issue no.2 was, however, answered against

the objectors, holding that the Court at Chandigarh has the jurisdiction to try the case. In view of these findings, Objection Petition filed by the respondents was allowed and the impugned Award dated 28.05.1992, made by the Arbitrator, was set aside and the petition, filed by the Contractor, for making the Award a rule of the Court, was dismissed with costs.

First appeal preferred by the petitioner herein was dismissed by the learned Additional District Judge, Chandigarh, vide judgment and decree dated 01.02.1995.

Feeling dissatisfied, the contractor has preferred the instant revision petition challenging the judgments and decrees of both the courts below.

I have heard learned counsel for the parties and also carefully perused the records.

Learned counsel for the petitioner contended that under condition no.70 of the Contract, containing the arbitration clause, it was mandatory for the Arbitrator to have passed reasoned or speaking order but the Award being non-speaking one, was liable to be set aside on this ground and thereupon the matter should have been remitted to the Arbitrator for passing a fresh speaking Award. Reliance for this proposition has been placed on the case of ***Gora Lal vs. Union of India*** reported as ***(2003) 12 Supreme Court Cases 459***. There cannot be any quarrel with the legal proposition. However, the said legal proposition would have helped the petitioner if the Award had been set aside on the sole ground of being a non-speaking Award. In the instant case, however, the Award has been set aside also on the finding that the Arbitrator committed legal misconduct by awarding the disputed amount in violation of express condition of the Contract. In this view of the matter, there was no occasion for remitting the matter to the Arbitrator for fresh decision by passing a speaking Award.

In view of above, the question to be determined is whether the Arbitrator travelled beyond his jurisdiction and awarded the amount in

question in contravention of express stipulation in the Contract. On this point, it has to be noticed that under clauses (A) and (B) of condition No.11 of the Contract, period for carrying out the work could be extended for reasons mentioned in the said clause. It is also not a matter of dispute that the period was so extended. Clause (C) of condition No.11 of the Contract stipulates that no claim, in respect of compensation or otherwise, howsoever arising, as a result of extensions granted under conditions (A) and (B), shall be admitted. However, the Arbitrator has awarded the amount in question to the Contractor towards damages resulting from prolongation of the contract period. In other words, the Arbitrator has allowed the claim of the Contractor arising from extension of contract period. However, no such claim was admissible in view of express clause (C) of condition no.11 of the Contract. The said condition is not a matter of dispute between the parties. It clearly and categorically provides that no claim of compensation shall be admissible on account of prolongation of the contract period. So, the amount in question on account of prolongation of contract period could not have been awarded by the Arbitrator in view of express stipulation in the contract. In other words, the disputed amount has been awarded by the Arbitrator in contravention of the said condition of the contract and thus, the Arbitrator had travelled beyond his jurisdiction and the award is liable to be set aside on this count.

Learned counsel for the respondents has cited ***Associated Engineering Co. vs. Government of Andhra Pradesh and another*** reported as ***AIR 1992 SC 232***. In that case also, the Arbitrator granted claim not covered by the agreement. It was held that if the Arbitrator wanders outside the contract, he commits a jurisdictional error and it is a misconduct by the Arbitrator. In the instant case, the Arbitrator travelled outside the contract and granted compensation to the Contractor which was specifically barred by the contract. The Arbitrator thus committed legal misconduct and the award has been rightly set aside by the courts below.

There are catena of rulings, cited by learned counsel for the respondents, in support of his aforestated contention, that if an Arbitrator awards compensation which is prohibited by the contract, the Award is liable to be set aside as it would amount to legal misconduct by the Arbitrator. In ***Jaswant Singh vs. Union of India and others (C.R.No.4064 of 2001, decided on 04.10.2002)***, ***Union of India vs. M/s Harbhajan Singh*** reported as ***(2007-1) Punjab Law Reporter 299, Union of India vs. M/s Om Construction Company*** reported as ***1997 (1) RCR (Civil) 143*** and ***Ramnath International Construction Pvt. Ltd. vs. Union of India and another*** reported as ***2007 (1) RCR (Civil),*** same clause 11 (C) of the Contract was interpreted and the Award of the Arbitrator granting compensation on account of prolongation of contract, was set aside being in violation of the said condition.

No ruling to the contrary has been cited by the learned counsel for the petitioner. In view of the consistent law laid down by this Court, as well as, by Hon'ble Apex Court in the aforesaid decisions, there is no escape from the conclusion that in the instant case, the Arbitrator misconducted himself as he awarded amount which was expressly barred by specific condition in the contract and so, the Award is completely unsustainable.

Learned counsel for the petitioner emphasised that the Award being non-speaking, the Court cannot go into the mental process of the Arbitrator for awarding the disputed amount. The argument, although apparently attractive in the first instance, is not acceptable in the facts of the instant case. As already noticed in detail, the Arbitrator has awarded the amount in gross violation of the express condition of the contract and so, the question of any reasoning or mental process of the Arbitrator is not involved. The Arbitrator could not have awarded the said amount at all being specifically barred by the Contract. In this regard, learned counsel for the respondents placed reliance on the case of ***M/s A.K.M.Construction &***

***Engg. Company vs. Commander Works Engineer*** reported as ***2007(1) RCR 86.*** It was observed therein that even if it is a non-speaking Award, if the claims awarded are contrary to the terms of the contract on the face of the record, the Court is not precluded from interfering with such an Award. The preposition of law that it is not open to the Court to attempt to probe into the mental process of the Arbitrator, where the Award is non-speaking, will not apply in such a case. In the instant case, the Arbitrator awarded the amount in violation of express condition of the contract. In the case of M/s A.K.M.Construction & Engg. Company *(supra)* also, same condition no.11 (C) of the contract was involved. The Award, granting amount on account of prolongation period of contract, was set aside. Such an Award suffers from an error, apparent on the face of the record. Thus, despite being non speaking Award, it cannot be sustained being in violation of the conditions of contract. Remanding the matter to the Arbitrator, in such circumstances, would be an exercise in futility.

For the reasons recorded herein above, there is no merit in this revision petition and the same is accordingly dismissed.

May 21, 2007 ( L.N.MITTAL )
*monika* JUDGE